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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 472

IN THE MATTER OF
LUSTRON CORPORATION,
BANKRUPT.

LAFAYETTE STEEL CO., INC.,
Petitioner,

vs.

LUSTRON CORPORATION, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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INDEX.

	PAGE
Opinion Below	2
Jurisdiction	2
Question Presented	3
Statute Involved	4
Statement	4
Reasons for Granting the Writ	7
Conclusion	16
Appendix A—Statute	17

CITATIONS.

Cases.

Allen v. Martin, 61 Miss. 78	9
Armour Fertilizer Works v. Sanders (C. A. 5), 63 F. (2d) 902, 904	12
Atlanta Flooring & Insulation Co. v. Russell (C. A. 5), 146 F. (2d) 884, 886	12
Bartlett Oil & Gas Co., In re (N. D. Okla.), 44 F. (2d) 616, 620	12
Beaumont v. Herrick, 24 Oh. St. 445	10
Blair v. Brailey (C. A. 5), 221 Fed. 1, 3	12
Boyd v. Longworth, 11 Ohio 235, 252	9
Brasch v. Mumey, 99 Ark. 324, 138 S. W. 458	9
Callaway v. Benton, 336 U. S. 132, 151	13
Cheney v. Maumee Cycle Co., 64 Oh. St. 205 60 N. E. 207, 210	12
Clarke v. Larremore, 188 U. S. 486	14
Clements v. Conyers (C. A. 7), 32 F. (2d) 5, 6	12

Cropper v. Brown, 76 N. J. Eq. 406, 74 Atl. 987 .....9, 10
Doyle, Receiver v. Yoho Hooker Youngstown Co., 130 Oh. St. 400, 200 N. E. 123, 125, 126 12
East Lampton, The (C. A. 2), 48 F. (2d) 542 8
Erie R. Co. v. Tompkins, 304 U. S. 64 .....8, 11
Federal Land Bank v. Floyd, 187 Ark. 616, 618, 61 S. W. (2d) 449 9
Fidelity-Phenix Fire Ins. Co. v. Haywood (C. A. 6), 71 F. (2d) 834 9
Files v. Brown (C. A. 8), 124 Fed. 133, 137 9
Fischer v. Pauline Oil & Gas Co., 309 U. S. 294, 302 ..13, 14
George v. Norwood, 77 Ark. 216, 220, 91 S. W. 557 ... 9
Haralson v. George, 56 Ala. 295 9
Hartford Accident & Indemnity Co. v. Crow (C. A. 6), 83 F. (2d) 486 8
Heller v. Lamar (C. A. D. C.), 77 F. (2d) 389 8
Helvering v. Stuart, 317 U. S. 154, 162-165 11
Howell v. French, 74 O. App. 257 10
Hughes v. Swope, 88 Ky. 254, 257, 1 S. W. 394 .....9, 10
Jashenosky v. Volrath, 59 Oh. St. 540, 53 N. E. 46 9
Johnson v. Baker, 246 Ky. 604, 610, 55 S. W. (2d) 404 9
Jones v. Springer, 226 U. S. 148, 156 .....13, 15
Klein's Rapid Shoe Repair Co., In re (C. A. 2), 54 F. (2d) 495 8
Knickerbocker Trust Co. v. Carteret Steel Co., 81 N. J. Eq. 130, 132, 86 Atl. 55 9
Marker v. Scotts Bluff County, 137 Neb. 360, 366, 289 N. W. 534 9
Matthew Manning's Case, 8 Coke 94(b), 77 Eng. Rep. 618 14
McGinnis v. Caldwell, 71 W. Va. 375, 378, 76 S. E. 834 9

Morrison v. Burnette (C. A. 8), 154 Fed. 617, 623 9
O'Connor v. Townsend (C. A. 8), 87 F. (2d) 882 8
Oviatt v. Brown, 14 Ohio 285 9
Park Lane Dresses v. Houghton & Dutton Co. (C. A. 1), 54 F. (2d) 33, 37 12
Parker v. Storts, 15 Oh. St. 351, 354 .....9, 10, 11
Realty Foundation, In re (C. A. 2), 75 F. (2d) 286, 288 8
Reed v. Radigan, 42 Oh. St. 292 10
Robertson v. McClintock, 86 Ark. 255, 258, 110 S. W. 1052 .....9, 10
Spiegel's Estate v. Comm., 335 U. S. 701, 708 11
Steele v. General Mills, 329 U. S. 433 11
Taubel-Scott-Kitzmiller Co. v. Fox, 264 U. S. 426, 429 . 14
Thomas v. Caldwell, 136 Ala. 518, 34 So. 949 9
Tyler, Ex parte, 149 U. S. 164, 183 12
Walters v. Homberg, 3 Oh. App. 326 10
Wolke Lead Batteries Co., In re (C. A. 6), 294 Fed. 509 8
Weir v. Snider Saw Mill Co., 88 Oh. St. 424 10
West v. American Telephone & Telegraph Co., 311 U. S. 223, 236 10

Statutes.

Act of June 22, 1938, c. 575, 52 Stat. 840, Sec. 67a (11 U. S. C., sec. 107a) 17
Rules of Decision Act (28 U. S. C., 1948 rev., sec. 1652) 11

Miscellaneous.

H. Rep. No. 1409, 75th Cong., 1st sess., p. 33 14
8 Cyclopedia of Federal Procedure (2d ed., 1943), Sec. 3575 9

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No. .....

IN THE MATTER OF
LUSTRON CORPORATION,
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LAFAYETTE STEEL CO., INC.,
Petitioner,

vs.

LUSTRON CORPORATION, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Lafayette Steel Company, Inc. prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered October 23, 1950 (R. 327).

OPINION BELOW.

The opinion of the Court of Appeals for the Seventh Circuit (R. 321-326) is reported at 184 F. (2d) 798.

JURISDICTION.

The judgment of the Court of Appeals for the Seventh Circuit was entered on October 23, 1950 (R. 327). A timely petition for rehearing was filed on November 6, 1950 (R. 327) and was denied on November 10, 1950 (R. 328). The jurisdiction of this Court is invoked under Title 28 U. S. C., sec. 1254(1).

QUESTION PRESENTED.

Petitioner, in good faith, before bankruptcy proceedings were begun against the debtor and with no knowledge or notice that any bankruptcy proceedings were imminent, purchased certain property at a judicial sale held by a United States District Court in Ohio in a general equity receivership proceeding. After the sale was held, but before it was confirmed, a petition in bankruptcy against the debtor was filed. The filing of the bankruptcy petition occurred within four months after the receivership began. After the bankruptcy petition was filed, the sale was confirmed by the Ohio court. Under Ohio law petitioner was entitled to have the sale confirmed and was the equitable owner of the property even before the sale was confirmed. Section 67a(3) of the Bankruptcy Act declares that the title of a *bona fide* purchaser of property at a judicial sale shall be valid even if the lien under which the sale was held should be rendered void by bankruptcy proceedings. The question of first impression presented is: Does such a *bona fide* purchaser lose its rights to the property under Ohio law despite the proviso of Section 67a(3) of the Bankruptcy Act because bankruptcy intervened between the holding of the judicial sale and its confirmation?[1]

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1. As a precautionary measure we note the following additional questions which are presented:

(1) Whether the rights and title of petitioner as a purchaser at an Ohio judicial sale must be determined under Ohio law. (2) Whether the court below properly held that Section 67a(3) of the Bankruptcy Act was inapplicable in this case. (3) Whether the court below followed express Congressional policy. (4) Whether the court below correctly ruled that the Ohio court lost all jurisdiction over the property after the bankruptcy petition was filed.

STATUTE INVOLVED.

The statute here involved is Section 67a of the Bankruptcy Act. Its pertinent provisions are set forth in the Appendix A, page 17.

STATEMENT.

This case arises out of the bankruptcy proceedings of Lustron Corporation[2] begun on June 8, 1950, in the United States District Court for the Northern District of Illinois, Eastern Division[3] (R. 2). Lafayette Steel Company, Inc., petitioner herein, filed a petition in those bankruptcy proceedings (R. 12-18) for the modification of an *ex parte* restraining order (R. 4) which the Bankruptcy Court had issued June 8, 1950, on application of the petitioning creditors therein, against Reconstruction Finance Corporation[4] and Clyde M. Foraker, a general equity receiver[5] of all the assets of Lustron. Foraker had been appointed the receiver of Lustron by the United States District Court

2. These bankruptcy proceedings are ordinary bankruptcy proceedings which were begun by three creditors, respondents herein, who filed a petition in bankruptcy against Lustron. Lustron consented to be adjudicated a bankrupt on June 12, 1950 (R. 7), so that in effect the proceedings are voluntary bankruptcy proceedings.

3. The Illinois District Court is for convenience referred to as the "Bankruptcy Court."

4. The Reconstruction Finance Corporation is for convenience referred to as "RFC."

5. The receiver appointed by the Ohio District Court is for convenience referred to as the "Ohio receiver."

for the Southern District of Ohio, Eastern Division[6] (R. 215) in a suit instituted on February 21, 1950, in that court by RFC against Lustron for a money judgment for money loaned, for foreclosure of chattel mortgages securing the loan, and for a general equity receivership of all Lustron's assets (R. 38).

The Bankruptcy Court's restraining order pertained to a judicial sale[7] of unmortgaged property of Lustron[8] held two days before, on June 6, 1950 (R. 283) under order[9] of the Ohio court (R. 257) at which petitioner had purchased the property for $645,000 (R. 292), of which it deposited $100,000 (R. 293), but which had not been confirmed at the time the restraining order was issued. The restraining order enjoined RFC, the Ohio receiver, and all parties to the Ohio suit, but not the Ohio court, from requesting confirmation of the sale or from taking any action in connection with the sale (R. 6). The Ohio court regarded that neither the pendency of the bankruptcy proceedings nor the Bankruptcy Court's restraining order affected its power or duty to confirm the sale, and on June 12, 1950, confirmed the sale (R. 291), on a written motion which had been filed on June 6, 1950, two days before the commencement of the bankruptcy case and the issuance of the restraining order (R. 262).

6. The Ohio District Court is for convenience referred to as the "Ohio court."

7. The judicial sale by the Ohio court is for convenience referred to as the "Ohio sale."

8. This property, which is for convenience referred to as "the property," consisted of two trucks, raw steel, certain work in process and completed parts, miscellaneous production and packaging materials, certain supplies, perishable tools and certain stationery and office supplies (R. 258).

9. The order of sale specifically provided for a deposit of a certified check or cash for $100,000 by the purchaser at "the time the bid is accepted" (R. 259) and that the balance of the purchase price was to be paid within three days from the date of confirmation of the sale, and that upon failure to comply, the purchaser would be in contempt of the Ohio court (R. 260).

Even though the sale had been confirmed, the Ohio receiver refused, because of the Bankruptcy Court's restraining order, to accept the balance of the purchase money tendered by petitioner or to give petitioner the property it had purchased (R. 293). Petitioner, asserting that the title acquired by it as a *bona fide* purchaser at a judicial sale held before bankruptcy remained valid under Section 67a(3) of the Bankruptcy Act, filed its petition in the Bankruptcy Court to have the restraining order modified to the extent necessary to permit the Ohio receiver to deliver the property petitioner had purchased (R. 12-18). The Bankruptcy Court held that petitioner was not a party in interest, but merely an offeror or bidder at a judicial sale, and thus was not entitled to intervene and accordingly dismissed Lafayette's petition (R. 301). Lafayette appealed from the Bankruptcy Court's order to the Court of Appeals for the Seventh Circuit, which affirmed the order of the Bankruptcy Court (R. 327).

REASONS FOR GRANTING THE WRIT.

The principal issue before the Bankruptcy Court and the Court of Appeals was whether petitioner was a "purchaser" at a judicial sale within the meaning of Section 67a(3) of the Bankruptcy Act and entitled to its protection. If so, then whatever title was acquired by petitioner at the Ohio judicial sale would remain valid despite the intervention of the bankruptcy proceedings against Lustron. This is a simple legal issue involving the construction of a statute. However, the opinion of the Court of Appeals gave scant consideration to Section 67a(3). In its opinion, the Court began by assuming, without making any inquiry as to the effect of Section 67a(3), that the property sold to petitioner, although sold at a judicial sale held two days before the institution of the bankruptcy proceedings remained the property of the debtor. Upon this assumption, the court applied the rule that on the filing of a petition in bankruptcy, the bankruptcy court acquires paramount and exclusive jurisdiction over all the property of the debtor. It accordingly concluded that as to the property here involved, when the petition in bankruptcy against Lustron was filed, the Ohio court "lost jurisdiction to proceed and the receiver of that court held those assets subject to the demands of the trustee in bankruptcy" (R. 323), and that the Bankruptcy "court rightfully restrained the confirmation of the sale to Lafayette, for it alone had jurisdiction thereafter to administer and dispose of the general assets of Lustron" (R. 323). This reasoning, which the Court of Appeals said, "should dispose of the case finally and completely" (R. 324), is an evasion rather than a decision of the issue involved.

1. The decision of the issues in this case necessarily requires consideration of the title and rights acquired before confirmation by petitioner as a *bona fide* purchaser at the Ohio court's judicial sale. It would seem obvious that Ohio law should determine the title and rights arising out of a judicial sale held in Ohio by a court sitting in Ohio as a court of equity, administering Ohio law in a case before it.[10]. Yet the Court of Appeals ignored applicable decisions of the Supreme Court of Ohio. It held on the authority of certain Federal court decisions[11] pertaining in the main to sales under the specific sale provisions of the Bankruptcy Act, that until confirmation the highest bidder at a judicial sale, although his bid had been accepted, does not even have an equitable title and "is not a purchaser and has no title until the sale is confirmed" (R. 324). Having reached this conclusion, and still ignoring Section 67a(3) of the Bankruptcy Act, the Court of Appeals stated: "It is of no importance that the Ohio law regarding such sales differs, if that were the fact, for, in view of the paramount character of the bankruptcy jurisdiction any disposition of general assets contrary to the provisions of the Bankruptcy Act by another court, state or federal, must fail when it infringes upon that jurisdiction" (R. 324).

The decisions of the Ohio Supreme Court as to the effect of an unconfirmed judicial sale are directly to the con-

10. *Erie R. Co.* v. *Tompkins*, 304 U. S. 64. Cf., *O'Connor* v. *Townsend*, (C. A. 8) 87 F. 2d 882.

11. The cases cited by the Court of Appeals (R. 324) all involved distinctive federal jurisdictions. They consisted of cases involving sales held under Section 70 of the Bankruptcy Act—*In re Klein's Rapid Shoe Repair Co.*, (C. A. 2) 54 F. (2d) 495; *Hartford Accident & Indemnity Co.* v. *Crow*, (C. A. 6) 83 F. (2d) 386; *In re Wolke Lead Batteries Co.*, (C. A. 6) 294 Fed. 509; *In re Realty Foundation*, (C. A. 2) 75 F. (2d) 286, 288; sales conducted in the District of Columbia—*Heller* v. *Lamar*, (C. A. D. C.) 77 F. (2d) 389; or sales in admiralty—*The East Hampton*, (C. A. 2) 48 F. (2d) 542.

trary. Thus, a purchaser at a judicial sale is regarded as a "purchaser" even before confirmation. Where, as in this case, the proceedings are legal and regular and no ground exists for setting aside the sale,[12] such purchaser has been held to be the equitable owner of the property before the sale is confirmed (*Parker* v. *Storts*, 15 Oh. St. 351, 354).[13] The risk of loss of the property after the sale and before confirmation is on the purchaser. *Jashenosky* v. *Volrath*, 59 Oh. St. 540, 53 N. E. 46. It has been held that the confirmation of the sale gives the purchaser no new right but merely confirms the right he had already acquired at the sale. *Boyd* v. *Longworth*, 11 Ohio 235, 252. The status of the purchaser as a *bona fide* purchaser is not affected by matters which came to his knowledge after the time of sale although before confirmation. *Oviatt* v. *Brown*, 14 Ohio 285.

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12. As established by the Ohio court's order of confirmation the proceedings in Ohio were legal and regular in every respect and no ground existed for setting the Ohio sale aside. The opinion of the Court of Appeals plainly recognizes that in the absence of the intervention of bankruptcy jurisdiction, petitioner had a right under Ohio law to have the sale confirmed (R. 325). In confirming the sale the Ohio court expressly found "the instructions, terms and conditions of said order of sale have been fully and completely followed" (R. 292).

13. Ohio is not alone in this view. Many other states follow the same rule and regard the purchaser as having substantial incidents of ownership prior to confirmation. *Cropper* v. *Brown*, 76 N. J. Eq. 406, 74 Atl. 987; *Knickerbocker Trust Co.* v. *Carteret Steel Co.*, 81 N. J. Eq. 130, 132, 86 Atl. 55; *Robertson* v. *M'Clintock*, 86 Ark. 255, 258, 110 S. W. 1052; *Federal Lank Bank* v. *Floyd*, 187 Ark. 616, 618, 61 S. W. (2d) 449; *George* v. *Norwood*, 77 Ark. 216, 220, 91 S. W. 557; *Brasch* v. *Mumey*, 99 Ark. 324, 138 S. W. 458; *Haralson* v. *George*, 56 Ala. 295; *Thomas* v. *Caldwell*, 136 Ala. 518, 34 So. 949; *Allen* v. *Martin*, 61 Miss. 78; *Hughes* v. *Swope*, 88 Ky. 254, 257, 1 S. W. 394; *Johnson* v. *Baker*, 246 Ky. 604, 610, 55 S. W. (2d) 404; *Marker* v. *Scotts Bluff County*, 137 Neb. 360, 366, 289 N. W. 534; *McGinnis* v. *Caldwell*, 71 W. Va. 375, 378, 76 S. E. 834. There is substantial federal authority to the same effect. *Files* v. *Brown*, (C. A. 8) 124 Fed. 133, 137; *Morrison* v. *Burnette*, (C. A. 8) 154 Fed. 617, 623; *Fidelity-Phenix Fire Ins. Co.* v. *Haywood*, (C. A. 6) 71 F. (2d) 834; 8 Cyclopedia of Federal Procedure (2d ed., 1943), Sec. 3575.

To support the conclusion it had already reached the Court of Appeals made a cursory reference to certain other Ohio decisions, which it stated were "not at variance" with its views[14] (R. 324). These cases, none of which deal specifically with the title or rights acquired under Ohio law by a *bona fide* purchaser at a judicial sale before confirmation, are completely inapplicable. At most these cases merely contain *obiter dicta* statements that a judicial sale is not "complete" until confirmation or that the rights of a purchaser fall to the ground if confirmation is properly refused. It is apparent that none of these *obiter dicta* statements is in any way inconsistent with the clear pronouncements of the Ohio Supreme Court in *Parker* v. *Storts*, 15 Oh. St. 351, 354, and the other cases here cited. Although a judicial sale is not "complete" until confirmation, it does not necessarily follow that the sale is a nullity until confirmed, so that the purchaser acquires no title or rights by the sale.[15]

This Court has clearly enunciated the consideration to be given by federal courts to state Supreme Court decisions in cases involving the application of state law. In *West* v. *American Telephone & Telegraph Co.*, 311 U. S. 223, 236, this Court held:

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14. The Court of Appeals cited the following Ohio cases (R. 324): *Reed* v. *Radigan*, 42 Ohio St. 292. In this case it was held that payment before confirmation of a judgment under which the sale was held was ground for setting aside the sale. The case contained a dictum that if confirmation is properly refused "the rights of the purchaser fall to the ground." *Weir* v. *Snider Saw Mill Co.*, 88 Ohio St. 424 and *Beaumont* v. *Herrick*, 24 Ohio St. 445 contain only *obiter dicta* statements that a sale is not "complete" until it is confirmed. *Howell* v. *French*, 74 O. App. 257 is an intermediate court decision which is completely inapplicable. *Walters* v. *Homberg*, 3 O. App. 326 distinctly supports petitioner's position and relies heavily upon the decisions cited by petitioner.

15. *Cropper* v. *Brown*, 76 N. J. Eq. 406, 412, 74 Atl. 987; *Robertson* v. *McClintock*, 86 Ark. 255, 258, 110 S. W. 1052; *Hughes* v. *Swope*, 88 Ky. 254, 257, 1 S. W. 394.

> "True, as was intimated in the *Erie R. Co.* case, the highest court of the state is the final arbiter of what is state law. When it has spoken, its pronouncement is to be accepted as defining state law unless it has later given clear and persuasive indication that its pronouncement will be modified, limited or restricted."

The inconclusive *obiter dicta* of the Ohio cases cited by the Court of Appeals can hardly be regarded as "clear and persuasive" indications by the Supreme Court of Ohio that its pronouncements in *Parker* v. *Storts,* 15 Oh. St. 351, 354, and the other Ohio Supreme Court decisions cited by petitioner are to be modified, limited or restricted. Yet in this case the Court of Appeals, despite its relative unfamiliarity and lack of experience with the law of Ohio, which is outside its circuit, had not the slightest hesitation in disregarding clear decisions of the Ohio Supreme Court.

The questions presented by this case, are of importance not only in resolving conflicts between trustees in bankruptcy and strangers to the bankruptcy proceedings asserting rights acquired under state law, which are of common occurrence in the administration of the Bankruptcy Act, but also in implementing the policy of *Erie R. Co.* v. *Tompkins,* 304 U. S. 64 and the Rules of Decision Act (28 U. S. C., 1948 rev., sec. 1652) to achieve conformity between Federal court decisions and State court decisions on matters of state law. These issues are especially highlighted in this case, where the territorial jurisdiction of neither the trial court nor of the appellate court includes the state whose law is involved.[16]

2. The principal issue in this case is whether Section 67a(3) of the Bankruptcy Act is applicable so as to allow

16. Cf., *Spiegel's Estate* v. *Comm.,* 335 U. S. 701, 708; *Helvering* v. *Stuart,* 317 U. S. 154, 162-165; *Steele* v. *General Mills,* 329 U. S. 433, where familiarity by a Court of Appeals with the State law involved was stressed as being an important consideration on review by this court.

to remain valid, despite the intervention of bankruptcy, whatever title and rights were acquired by petitioner at the Ohio court's judicial sale. Near the end of its opinion the Court of Appeals for the first time referred to Section 67a(3) and quickly disposed of it by holding it was not applicable, saying: "The short answer is • • • that the Ohio receiver's sale was not in pursuance of any lien but a sale of general assets" (R. 325).

Prior to the instant case it had long been settled law under the undeviating decisions of the same Court of Appeals, as well as of this Court, other federal courts of appeals, and the Supreme Court of Ohio, that a general equity receivership was the levy of an equitable execution upon all assets coming into the receiver's possession and fastened a judicial lien upon those assets within the meaning of Section 67a(3) of the Bankruptcy Act.[17] The Court of Appeals here specifically recognized that the Ohio court's judicial sale was "pursuant to the Court's administration of the general assets of the bankrupt" (R. 326). Had it followed the rule that a general equity receivership imposed a judicial lien, it could not have concluded that the sale in this case was not in pursuance of any lien. Its holding in this case is in direct conflict with all the prior decisions on this point, and casts doubt upon what until now had been established law.

The determination of this question is of great importance in the administration of the Bankruptcy Act, especially in avoiding and resolving unseemly conflicts of jurisdiction

17. *Doyle, Receiver* v. *Yoho Hooker Youngstown Co.*, 130 Oh. St. 400, 200 N. E. 123, 125, 126; *Cheney* v. *Maumee Cycle Co.*, 64 Oh. St. 205, 60 N. E. 207, 210; *Ex parte Tyler*, 149 U. S. 164, 183; *Blair* v. *Brailey*, (C. A. 5) 221 Fed. 1, 3; *Clements* v. *Conyers*, (C. A. 7) 32 F. (2d) 5, 6; *Atlanta Flooring & Insulation Co.* v. *Russell*, (C. A. 5) 146 F. (2d) 884, 886; *In re Bartlett Oil & Gas Corp.*, (N. D. Okla.) 44 F. (2d) 616, 620; *Park Lane Dresses* v. *Houghton & Dutton Co.*, (C. A. 1) 54 F. (2d) 33, 37; *Armour Fertilizer Works* v. *Sanders*, (C. A. 5) 63 F. (2d) 902, 904.

between courts of bankruptcy and non-bankruptcy courts which can only serve to undermine public confidence in our judicial system.

3. The question of the jurisdiction of the Ohio court to confirm, after bankruptcy proceedings have begun, a judicial sale of property of the debtor held before the commencement of the bankruptcy proceedings, has never been passed on before the instant case.[18]

If Ohio law is followed in this case, then when bankruptcy intervened, petitioner was the equitable owner of and had equitable title to the property it had purchased at the Ohio judicial sale even though the sale had not then been confirmed. Section 67a(3) of the Bankruptcy Act expressly declares that such a title shall remain valid despite the operation of the Bankruptcy Act. Confirmation of the judicial sale by the Ohio court amounts to no more than the formal recognition of petitioner's already existing equitable title. In view of Section 67a(**3**) such confirmation, although occurring after the bankruptcy proceedings began would seem to be merely an assertion of jurisdiction "not inconsistent with the provisions of the Bankruptcy Act", which this Court sanctioned in *Callaway* v. *Benton,* 336 U. S. 132, 151 and not a "disposition of general assets contrary to the provisions of the Bankruptcy Act" as the court below held it to be (R. 324).

This question of the effect of Section 67a(3) of the Bankruptcy Act on the jurisdiction of non-bankruptcy courts after the intervention of bankruptcy is one of fundamental importance in the administration of the Bankruptcy Act.

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18. In *Jones* v. *Springer*, 226 U. S. 148, this Court sustained a judicial sale by a non-bankruptcy court which was both held and confirmed after bankruptcy proceedings had been started against the debtor. However, in that case this Court expressly avoided any consideration of Section 67 of the Bankruptcy Act, but based its decision on another ground, the necessity of the sale because the property was in danger of destruction. *Cf., Fischer* v. *Pauline Oil & Gas Corp.,* 309 U. S. 294.

4. Since bankruptcy commonly follows in the wake of a judicial sale, the question of the scope of Section 67a(3) of the Bankruptcy Act presented by this case is one of fundamental importance in the administration of the Bankruptcy Act. The decision of this question will have far reaching consequences in encouraging or discouraging bidders at judicial sales in nonbankruptcy proceedings.

In its Report recommending the enactment of Section 67a(3) in its present amended form along with the other Chandler Act amendments to the Bankruptcy Act, the Committee of the Judiciary of the House of Representatives stated the purpose of Sec. 67a(3) as follows: "This exception is deemed to be necessary and in the interest of protecting judicial sales" (H. Rep. No. 1409, 75th Cong., 1st Sess., 1937, p. 33). Congress gave express statutory recognition to a fundamental policy of the common law since time immemorial[19] of protecting the stability of judicial sales so as to encourage persons to bid at such sales and enacted this policy into Section 67a(3) to protect *bona fide* purchasers at judicial sales against the intervention of bankruptcy. The decisions of this Court also recognize that *bona fide* purchasers of property are to be protected should bankruptcy proceedings intervene. *Fischer* v. *Pauline Oil & Gas Co.*, 309 U. S. 294, 302; *Taubel-Scott-Kitzmiller Co.* v. *Fox*, 264 U. S. 426, 429. Although in such cases the purchaser retains the property, the bankrupt estate obtains the proceeds of the sale in lieu of the property. *Clarke* v. *Larremore*, 188 U. S. 486.

Had the judicial sale in this case been confirmed by the Ohio court an instant before the bankruptcy proceedings against Lustron were filed, there could have been no question that Section 67a(3) would apply and that petitioner

19. *Mathew Manning's Case*, 8 Coke 94(b), 77 Eng. Rep. 618, decided in 1609 by Lord Chief Justice Coke, shows the policy to be fundamental and long established in our legal system.

would be protected in its purchase. In this case the purchaser was denied the protection of Section 67a(3) because bankruptcy intervened before the sale was confirmed. As far as the policy of protecting the stability of judicial sales so as to encourage bidders at such sales is concerned, it should make no difference whatever whether bankruptcy intervenes before or after the confirmation. A prospective purchaser bidding at a judicial sale has no way of foretelling whether bankruptcy proceedings will be filed against the debtor and, if filed, whether they will be filed before or after confirmation of the sale. If such a purchaser, though entitled to confirmation must lose his title and rights to the property should bankruptcy intervene before the sale is confirmed then no purchaser can bid at any judicial sale with any certainty of obtaining the property. No purchaser would be willing to bid and have his money tied up unless he could buy the property cheaply enough to compensate him for the risk.

The risk and doubt engendered by the Court of Appeal's decision will necessarily infect every non-bankruptcy judicial sale. Such sales will become nothing more than sacrifice sales. As aptly stated by Mr. Justice Holmes in *Jones* v. *Springer*, 226 U. S. 148, 156, if "the purchaser is chargeable with notice that there may be somewhere a petition filed that will destroy his title, the doubt affects the price that he will give, and if the sale turns out to be effective, the goods have been sacrificed."

The decision of this question is a matter of great economic as well as legal importance, affecting every prospective bidder at a judicial sale and should be authoritatively settled by this Court.

Conclusion.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

Act of June 22, 1938, c. 575, 52 Stat. 840:

"Sec. 67 (Title 11, U. S. C., sec. 107). LIENS AND FRAUDULENT TRANSFERS.

"a.(1) Every lien against the property of a person obtained by attachment, judgment, levy, or other legal or equitable process or proceedings within four months before the filing of a petition in bankruptcy * * * by or against such person shall be deemed null and void (a) if at the time when such lien was obtained such person was insolvent or (b) if such lien was sought and permitted in fraud of the provisions of this Act: * * *

* * * * *

"(3) The property affected by any lien deemed null and void under the provisions of paragraphs (1) and (2) of this subdivision a shall be discharged from such lien, and such property * * * shall pass to the trustee or debtor, as the case may be * * * *Provided, however,* That the title of a bona-fide purchaser of such property shall be valid, but if such title is acquired otherwise than at a judicial sale held to enforce such lien, it shall be valid only to the extent of the present consideration paid for such property."